

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 3,875,390
 For the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT!
 WWW.EXERGAMEZONE.COM (and Design)
 Registered on the Principal Register on November 16, 2010

Motion Fitness	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. _____
	:	
Jonathan Jarashow,	:	
	:	
Registrant.	:	

PETITION TO CANCEL

Petitioner, Motion Fitness Corporation (hereinafter “Petitioner”), an Illinois Corporation with a principal place of business located at 428 S. Vermont Street Palatine, IL 60067 believes that it is and will continue to be damaged by the continued registration of U.S. Registration 3,875,390 for the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) and, accordingly, hereby petitions this honorable tribunal to cancel the same pursuant to 15 U.S.C. § 1064 and 37 C.F.R. § 2.111(b).

Grounds for Cancellation

As grounds for the instant Petition to Cancel, it is alleged that:

1. The mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) (U.S. Registration No. 3,875,390) was abandoned without the intent to resume use by the Registrant Jonathan Jarashow (hereinafter “Registrant”).



Statement of Facts

In support for the instant Petition to Cancel, it is alleged that:

1. Registrant contends that it is the owner of the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) used in connection with the following services in:

International Class 41: Providing fitness and exercise facilities; Video arcade services.

2. Registrant filed his application to register the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) on or about April 1, 2009 alleging a first date of use of January 1, 2007. The application received U.S. Serial No. 77/704,304.

3. Registrant's application for the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) registered on November 16, 2010 on the Principal Register and received Registration No. 3,875,390.

4. Petitioner owns the mark EXERGAME for use in connection with the following goods and services in:

International Class 028: Exercise machines incorporating electronic and video game controllers.

International Class 041: Entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure or entertainment purposes.

Registrant's Abandonment of The Mark in Commerce

5. Based upon information and belief, Registrant used the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT!

WWW.EXERGAMEZONE.COM (and Design) in connection with fitness and exercise facilities and video arcade services since as early as January 1, 2007.

6. Based upon information and belief, Registrant's above referenced fitness and exercise facilities providing video arcade services are no longer in business since at least as early as May 8, 2012.

7. Based upon information and belief, Registrant ceased use of the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) in interstate commerce in connection with the goods identified in U.S. Registration 3,875,390.

8. Based upon information and belief, as of the date of this filing, Registrant has yet to resume use of the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) in connection with the goods identified in U.S. Registration 3,875,390.

9. Moreover, Registrant does not retain the intent to resume use of the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) in the future since it ceased use of the mark in commerce on or around May 8, 2012.

Conclusion

10. WHEREFORE in consideration that the mark EXERGAME ZONE KIDS ACTIVITY ARCADE WHERE KIDS GET FIT! WWW.EXERGAMEZONE.COM (and Design) is no longer in use, has been abandoned, and the Registrant does not retain the intent to resume use, Petitioner requests and prays that U.S. Registration 3,875,390 be cancelled on the grounds and for the reasons set forth hereinabove.

Respectfully submitted this 8th day of May, 2013.

The Trademark Company, PLLC

/Matthew H. Swyers/

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing document has been served
by U.S. First Class, postage prepaid, this 8th day of May, 2013, to the following:

DEBORAH DE CHELFIN
VCORP SERVICES, LLC
20 ROBERT PITT DR STE 214
MONSEY, NEW YORK 10952-3340
UNITED STATES

/Matthew H. Swyers/
Matthew H. Swyers